

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	
	:	
v.	:	Crim. No. 18-653 (NLH)
	:	
EUGENE SPARROW	:	
Defendant	:	OPINION

APPEARANCES:

HELMER, CONLEY & KASSELMAN, P.A.
By: Ira M. Slovin, Esq.
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On behalf of Defendant Eugene Sparrow

OFFICE OF THE UNITED STATES ATTORNEY
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On behalf of the United States of America

HILLMAN, District Judge

This matter comes before this Court upon Defendant Eugene Sparrow's Supplemental Memorandum for Reduction of Sentence [Dkt. No. 36] and prior *pro se* Motion for Reduction of Sentence [Dkt. No. 34], both pursuant to the First Step Act, 18 U.S.C. § 3582(c)(1)(A). Defendant is an inmate currently serving a 57-month sentence at Federal Correctional Institution ("FCI")

Schuylkill, a medium-security federal prison in Minersville, Pennsylvania.

In the instant motion, Defendant seeks immediate release to home confinement on the basis of multiple medical conditions - obesity, hypertension, and pre-diabetes - which he contends put him at a heightened risk for complications if he contracts COVID-19. The Government opposes Defendant's motion, arguing that Defendant does not merit release under the factors set forth in 18 U.S.C. § 3553(a). The Government also asserts that the Federal Bureau of Prisons ("BOP") has taken significant steps to protect the health of inmates in its custody, including those housed at FCI Schuylkill.

For the reasons stated below, Defendant's motion will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 5, 2019, Defendant pleaded guilty to a one count Indictment, on a charge - namely, possession of a firearm by a convicted felon - stemming from his role in a March 2018 shooting at a group of people in Newark, New Jersey.

On July 31, 2019, this Court sentenced Defendant to 57 months' imprisonment.

Defendant first submitted a petition for compassionate release to Warden Scott Finley of FCI Schuylkill on April 13, 2020. Warden Finley issued a denial of that request on April

17, 2020. On April 28, 2020, Defendant filed a *pro se* motion, and on July 1, 2020, filed a supplemental memorandum through counsel, seeking compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). Defendant alleges that he suffers from obesity and hypertension and is "pre-diabetic", all of which make him particularly vulnerable to becoming seriously ill from COVID-19, and that he is more likely to contract COVID-19 while incarcerated at FCI Schuylkill.

II. LEGAL STANDARD

"The recently enacted First Step Act allows a defendant to be afforded compassionate release for 'extraordinary and compelling reasons.'" United States v. Sellers, Crim. No. 10-434, 2020 WL 1972862, at *1 (D.N.J. April 24, 2020) (quoting 18 U.S.C. § 3582(c)(1)(A)(i)). Before bringing a motion for reduced sentence on their own behalf, defendants first "must ask the Bureau of Prisons ('BOP') to do so on their behalf, give BOP thirty days to respond, and exhaust any available administrative appeals." United States v. Raia, Civ. No. 20-1033, 2020 WL 1647922, at *1 (3d Cir. April 2, 2020) (citing 18 U.S.C. § 3582(c)(1)(A)). "Thus, under the First Step Act, a defendant seeking a reduction in his term of imprisonment bears the burden of satisfying both that he has (1) exhausted remedies before seeking judicial review, and (2) that compelling and extraordinary reasons exist to justify compassionate release."

Sellers, 2020 WL 1972862 at *1 (citing 18 U.S.C. § 3582(c)(1)(A)).

At this second step, a court may reduce an inmate's sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) "if the court finds that (1) extraordinary and compelling reasons warrant a reduction, (2) the reduction would be consistent with applicable policy statements issued by the Sentencing Commission, and (3) the applicable sentencing factors under § 3553(a) warrant a reduction." United States v. Pabon, Crim. No. 17-165-1, 2020 WL 2112265, at *2 (E.D. Pa. May 4, 2020).

III. DISCUSSION

As the nation continues to grapple with the COVID-19 pandemic, the Court considers Defendant's Motion and its underlying concerns with seriousness. However, as the United States Court of Appeals for the Third Circuit has articulated, "the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP's statutory role and its extensive and professional efforts to curtail the virus's spread." United States v. Raia, 954 F.3d 594, 597 (3d Cir. 2020).

Defendant alleges, and the Government does not dispute, that Defendant has satisfied the exhaustion requirement by submitting a request for compassionate release to the FCI

Schuylkill administration and receiving a denial of that request. Further, Defendant alleges, and the Government agrees, that Defendant's obesity is an "extraordinary and compelling reason" for compassionate release in the face of the current pandemic. The parties diverge, however, on whether conditions at FCI Schuylkill also constitute an "extraordinary and compelling reason." Therefore, the Court focuses first on that question, and then on the final step of the analysis: whether the applicable sentencing factors under § 3553(a) warrant a reduction in Defendant's sentence.

Defendant argues that prison conditions at FCI Schuylkill, and in BOP custody generally, put Defendant at heightened risk of contracting COVID-19. Defendant alleges that he "cannot practice regular hand hygiene, [and] cannot effectively socially distance" while incarcerated. He also alleges that recent transfers into the prison of inmates from the Metropolitan Correction Center in New York has increased his risk of exposure to COVID-19, and that the prison's medical facilities and testing capacity are insufficient for dealing with the pandemic. Defendant does not otherwise allege specific shortcomings at FCI Schuylkill, but cites several news articles about conditions in different BOP facilities.

The Government argues that BOP has undertaken a number of interventions, in accordance with its Coronavirus (COVID-19)

Action Plan (the "Action Plan"), to minimize risk of virus transmission into and within BOP facilities. These steps include imposing restrictions on visitation, transfers, and non-essential activities; increasing medical screening of inmates and staff; and implementing changes in facility maintenance and sanitation. These steps appear to have had some effectiveness. According to the BOP website, as of the date of this Opinion FCI Schuylkill has only one confirmed active case.¹

The Court is mindful that the general conditions of incarceration - confinement in relatively small enclosed spaces, use of common bathrooms, rationed access to hygienic products and healthcare - make prisons potential "hot spots" for virus transmission. However, given the markedly restrained progression of the virus within FCI Schuylkill, as compared to within the Delaware Valley region generally, BOP's Action Plan appears to be having a positive impact.

Under the circumstances, granting Defendant's request to be released to reside with either his mother or his sister in Newark, New Jersey could place him at greater risk of contracting COVID-19 than the risk he currently faces. As of

¹ See <https://www.bop.gov/coronavirus/> (last visited July 28, 2020).

July 25, 2020, Newark had 7,987 confirmed cases and 644 deaths.² Moreover, Defendant noted in his supplemental memorandum that at least two members of his extended family have recently passed away due to COVID-19-related complications. Exposure to family members may therefore increase his risk of exposure to the virus.

The Court is sympathetic to Defendant's concerns for his health while in custody. Nevertheless, Defendant has failed to demonstrate that conditions at FCI Schuylkill provide an "extraordinary and compelling" reason justifying his compassionate release.

While the Court agrees that Defendant's obesity constitutes an "extraordinary and compelling" reason for release, it must also weigh the sentencing factors set forth in 18 U.S.C. § 3553(a), such as the nature and circumstances of the crime, Defendant's background and characteristics, and the need for specific and general deterrence. See Pabon, 2020 WL 2112265, at *2.

In this case, several factors weigh heavily against release. Defendant's crime of conviction, unlawful possession of a firearm, stemmed from a far more serious offense,

² County of Essex, NJ , "Essex County Coronavirus Cases", available at <https://essexcountynj.org/covid-19-municipality/> (accessed on July 28, 2020).

discharging that firearm into a crowd. Defendant's background also involves use of a firearm, specifically the commission of armed robbery. Additionally, Defendant's record contains multiple arrests for possession, manufacture and distribution of controlled dangerous substances, including when on parole for his armed robbery conviction. These are serious crimes that should give any court pause in considering early release.

Moreover, Defendant has served less than half of his 57-month sentence. Release now would not reflect the seriousness of Defendant's offense, and would be inconsistent with notions of both specific and general deterrence.

The Court thus finds that the sentencing factors in 18 U.S.C. § 3553(a) weigh against Defendant's release.

IV. CONCLUSION

For the foregoing reasons, Defendant's Supplemental Memorandum for Reduction of Sentence [Dkt. No. 36] and prior *pro se* Motion for Reduction of Sentence [Dkt. No. 34], both pursuant to the First Step Act, 18 U.S.C. § 3582(c)(1)(A), will be denied.

An Order consistent with this Opinion shall issue on this date.

DATED: July 28, 2020
At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.